

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5702**

**PETITION OF MORRIS BATES**  
(Hearing held January 16, 2002)  
(Worksession Decision, January 23, 2002)

**OPINION OF THE BOARD**  
(Effective date of Opinion, February 28, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioner proposes to construct a one-story addition that requires a 1.08 foot variance as it is within 5.92 feet of the side lot line. The required setback is seven (7) feet.

Kyle Kreutzberg of Mitchell, Best & Goldsborough, Inc., represented Laura Bates, the petitioner, at the public hearing.

The subject property is Lot 25, Block 5, Chevy Chase Section 5-A Subdivision, located at 3807 Woodbine Street, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 07578575).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners originally proposed to enclose and expand an existing 10 x 13.8 foot screened porch located at the eastern section of the residence. The variance requested was later amended to permit the enclosure of the existing screened porch. See, Exhibit Nos. 13(a) through 13(d).
2. The residence was built in 1928 and that the porch was built with the original house. The existing porch is sited 13 inches into the side yard setback.
3. The amended variance request would permit the enclosure of the existing screened porch and would not increase or expand the footprint of the existing structure.
4. The petitioner stated at the public hearing that she has spoken with her neighbors and that her neighbors support the variance request. Letters of support were entered in the record as Exhibit No. 12(a) through 12(d).

**FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The screened porch has existed on the property since 1928. The footprint of the porch would not be expanded and would maintain the same roofline as that of the current structure. The Board finds that the existence of the porch since 1928 is an exceptional circumstance that is unique to the property. The Board observes that this finding is consistent with the policy set forth in Courts and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the enclosure of existing screened porch is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains several letters of support (Exhibit Nos. 12(a) through 12(d)), and the Board finds that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 1.08 feet from the required seven (7) foot side lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to the amended plans entered in the record as Exhibit Nos. 13(a) through 13(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 28th day of February, 2002

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.